

CHURCHILL DOWNS

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Honorable Senator Osten, Representative Horn, Senator Champagne and Representative Howard and distinguished members of the Public Safety and Security Committee,

Thank you for your consideration of SB 134, which would remedy a technical issue that arose during the 2019 legislative session. As a part of the 2019 budget bill, language was inserted into the pari-mutuel wagering code that would extend the state's off-track betting licensee the exclusive privilege of operating online pari-mutuel wagering, also known as advance deposit wagering (ADW), at the exclusion of all out-of-state companies. This approach, which insulates an in-state provider against competition from out-of-state providers, not only attempts to deprive citizens of Connecticut of the benefit of competition, but also violates the Commerce Clause of the United States Constitution, which forbids states from discriminating against or unduly burdening interstate commerce. As companies that operate both brick-and-mortar racetracks as well as advance deposit wagering, we feel compelled to point out the various issues with the 2019 change.

First, the Public Safety and Security Committee was not afforded the opportunity to fully vet the proposal that extended pari-mutuel wagering exclusivity to a single in-state provider. Issues surrounding interstate horseracing are quite intricate, requiring compliance with the Interstate Horseracing Act and the consent rights of numerous out-of-state parties, including the racetracks upon which wagers are placed, to be legal. This is not the sort of policy change that should have been slipped in a budget bill, circumventing the proper process and bypassing this committee.

Second, the newly-added language in 12-572b discriminates against interstate commerce by giving an in-state company a monopoly on ADW and also imposes an undue burden on interstate commerce that is clearly excessive in light of any supposed local benefits. In fact, the new language tries to turn interstate commerce into intrastate commerce by suggesting that any advance deposit wager that originates from within the state shall be considered to be a wager made exclusively in the state. This completely ignores that the activity in question is interstate commerce governed by federal law because it involves wagers that are both placed on races conducted outside the state and commingled in wagering pools outside the state. Although impermissible discrimination can arise in many forms, one typical form of state regulation that the Supreme Court has routinely found to violate the dormant Commerce Clause is a regulation that requires certain transactions and activities to occur in state rather than through the interstate market. Multiple Supreme Court cases have invalidated local laws that force services that could be provided out-of-state instead to be performed in state by the favored local provider and therefore deprive out-of-state businesses access to the local market. Here, the state is not providing a governmental service, instead, it is attempting to convert an interstate market into a purely local market and it is doing so for the benefit of a single local provider. This state-sanctioned favoritism for an in-state entity, at the expense of out-of-state competitors, renders 12-572b unconstitutionally discriminatory. This is precisely the type of economic balkanization the Commerce Clause was intended to prevent.

Lastly, from the racetrack operator perspective, placing limitations on the distribution of racetrack signals harms the horseracing industry overall. ADW operators bring a new customer base to horseracing with many customers reporting that they would not go to a physical location to place a bet. This added value evaporates when ADW operators, particularly those that are investing significantly in technology, customer service and national advertising, are shut out of the market. Consumers suffer if out-of-state tracks are prevented from accessing the market altogether. They may also lose the opportunity to bet certain races and racetracks, especially if the single operator experiences issues or outages with its wagering platform. This is particularly critical on days with significant stakes races where a short outage can have an extreme impact on races that last under 2 minutes. In closing, a competitive, open market for ADW providers is better for Connecticut, Connecticut bettors and the horseracing industry as a whole. Again, we appreciate the committee's willingness to consider restoring Connecticut's ADW marketplace to the status quo, which operates within the guidelines of the Interstate Horseracing Act and the Constitution. We stand ready to consult on any policy decisions relating to ADW to remain compliant with the federal legal landscape and consistent with other states' approaches to interstate wagering on horseracing.